

## Judge Jay C. Waldman

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Judge Waldman was born on November 16, 1944, in Pittsburgh, Pennsylvania. He received a B.S. from the University of Wisconsin (cum laude) in 1966 and a J.D. from the University of Pennsylvania in 1969. From 1970 until 1971, Judge Waldman was in private practice in Pittsburgh, Pennsylvania. From 1971 until 1986, Judge Waldman was in Government service, serving as an Assistant United States Attorney for the Western District of Pennsylvania, Deputy Assistant Attorney General (for the Criminal Division), Counsel to the Governor of Pennsylvania, and General Counsel for the Commonwealth of Pennsylvania. From 1986 until 1988, Judge Waldman was in private practice in Philadelphia, Pennsylvania. Judge Waldman was appointed to the United States District Court for the Eastern District of Pennsylvania in 1988.

### **PRELIMINARY GENERAL MATTERS**

#### **1.     *General Policy.***

The manner in which Judge Waldman manages litigation may vary considerably depending, *inter alia*, on the nature of the action, the complexity of the issues presented, the nature and extent of any discovery involved, the experience and performance of counsel, the number of parties and attorneys, the distances which counsel and others must travel for any conference or in-court proceeding, whether any party is unrepresented by counsel, whether a party is incarcerated (over 10% of the civil docket is prisoner litigation), any particular financial constraints on a party who nevertheless needs or wishes to litigate, the diligence with which the parties are litigating--particularly a party seeking an extension or continuance, and when they reasonably can be accommodated, the preference of the litigants and counsel.

#### **2.     *Correspondence With the Court***

Judge Waldman does not prohibit correspondence from counsel on matters that are properly conveyed by correspondence. However, if a party is asking the Court to make a ruling, the party should submit a proper motion. The Court cannot rule on a letter.

#### **3.     *Communications With Law Clerks***

Judge Waldman generally prohibits counsel from speaking directly with his law clerks.

#### **4.     *Telephone Conferences***

Judge Waldman neither encourages nor discourages the use of telephone conferences. Some matters are best addressed in open court, some in chambers, some by telephone, and others

in written form. Counsel desiring to schedule a telephone conference should contact Judge Waldman's chambers and state the reasons for the request.

### **5. *Oral Arguments and Evidentiary Hearings***

Judge Waldman normally does not set aside specific days or times for oral arguments or evidentiary hearings.

### **6. *Pro Hac Vice Admissions***

Judge Waldman always requires the submission of a formal motion and form of order for *pro hac vice* admissions. See Rule 83.52(b) of the Local Rules of Civil Procedure of the United States District Court for the Eastern District of Pennsylvania.

## **CIVIL CASES**

### **Pretrial Procedure**

#### **1. *Pretrial Conferences***

Judge Waldman rarely, if ever, conducts telephone status conferences. Rule 16 conferences are normally held in chambers, but sometimes they are conducted on the record in open court. After a status conference, a Scheduling Order usually will be entered setting firm dates for discovery cutoffs, the exchange of expert reports, and for the case to be placed in the trial pool.

Judge Waldman generally will schedule additional Rule 16 conferences, if appropriate, at the request of counsel. In complex cases, counsel may be asked to prepare an agenda for a Rule 16 conference.

Judge Waldman conducts settlement conferences and final pretrial conferences only in cases that warrant such conferences.

### **Continuances and Extensions**

#### **1. *General Policy***

Judge Waldman requires requests for continuances and extensions to be made by motion, and he grants such requests only for good cause shown.

#### **2. *Requests for Extensions and Continuances***

Judge Waldman does not impose any specific requirement as to how far in advance of a

scheduled event counsel must request a continuance or an extension. If the grounds set forth in a party's motion warrant an extension of time, the request will be granted.

### **General Motion Practice**

#### **1. *Oral Argument on Motions***

Without regard to whether it has been requested, Judge Waldman will hold oral argument on motions when he believes that such oral argument may be beneficial.

#### **2. *Reply and Surreply Briefs***

Reply briefs and supplementary briefs are generally allowed by Judge Waldman.

#### **3. *Chambers Copies of Motion Papers***

Judge Waldman encourages counsel to send courtesy copies of motion papers to his chambers.

### **Discovery Matters**

#### **1. *Length of Discovery Period and Extensions***

When setting the length of allowed time for discovery, Judge Waldman will consider the input of counsel. However, once the discovery schedule has been established, Judge Waldman usually will only grant extensions of time upon the filing of a motion demonstrating good cause.

#### **2. *Discovery Conferences and Dispute Resolution***

If problems surface in discovery, an appropriate motion should be filed. Judge Waldman will then conduct a conference or hearing if necessary.

#### **3. *Confidentiality Agreements***

Judge Waldman will entertain a request for a confidentiality order, whether contested or uncontested, only when it is supported by the type of particularized averments required by *Pansy v. Borough of Stroudsburg*, 23 F.3d 772 (3d Cir. 1994), and other pertinent precedent.

#### **4. *Expert Witnesses***

In cases involving expert witnesses, Judge Waldman generally requires that each expert prepare a written report. Judge Waldman has no specific policy concerning the point in a case at which the parties should identify expert witnesses, nor does he follow a specific policy or

procedure governing the depositions of expert witnesses in all cases. Judge Waldman's standard form of Scheduling Order (copy attached) does, however, require the production of expert reports at specific times.

## **Settlement**

### **1. *General Approach to Settlement and Non-jury Cases***

Judge Waldman does not discuss settlement with counsel throughout the pendency of a case. Judge Waldman generally conducts a settlement conference only in cases where and at such juncture as counsel indicate that a settlement conference would be welcome or useful. He rarely conducts settlement discussions more than once in a given case.

### **2. *Referral of Settlement Negotiations to Another District Court Judge***

To date, Judge Waldman has never referred settlement negotiations in a non-jury case to another District Court Judge or Magistrate Judge.

## **Arbitration**

### **1. *General Approach to Arbitration Cases***

Judge Waldman generally follows the same practices and procedures in arbitration cases that he follows in cases certified as involving more than \$100,000.

### **2. *Scheduling of Trial De Novo From Arbitration***

In arbitration cases, Judge Waldman does not set trial dates in arbitration cases resulting in a demand for trial *de novo*. Counsel are notified that discovery generally will not be permitted after arbitration and that a case appealed from arbitration is subject to immediate call for trial.

## **Proposed Final Pretrial Memoranda**

### **1. *Required Form of Pretrial Memoranda***

In addition to the requirements of Local Rule of Civil Procedure 16.1, Judge Waldman requires counsel to set forth objections based on authenticity, admissibility (except because of a lack of relevance), or the lack of qualifications of a proffered expert witness in the pretrial memorandum. Counsel are also required to file a memorandum setting forth the legal issues raised by the case.

## **Injunctions**

### **1.     *General Approach***

In cases involving requests for injunctive relief, Judge Waldman generally follows the same procedures as in "standard" non-jury cases.

### **2.     *Scheduling and Expedited Discovery***

Judge Waldman follows no uniform practice or procedure in scheduling hearings on motions seeking preliminary or permanent injunctions. Depending on the facts and circumstances of the particular case, he may permit expedited discovery in injunctive matters.

### **3.     *Proposed Findings of Fact and Conclusions of Law***

Judge Waldman typically requires the submission of proposed findings of fact and conclusions of law in injunction cases.

## **Trial Procedure**

### **1.     *Scheduling of Cases***

Each case on Judge Waldman's calendar is assigned a date on which it will be placed into the trial pool. Cases are not necessarily called for trial in the order in which they have been placed in the pool. Special listings are reserved for complex, multi-party cases.

### **2.     *Conflicts of Counsel***

When counsel become aware of professional or personal conflicts that may affect the trial schedule, they should file an appropriate motion (including a stipulation with opposing counsel, if appropriate).

### **3.     *Cases Involving Out-of-Town Parties or Witnesses***

Although Judge Waldman has no special policy for these matters, some consideration will be given to out-of-town attorneys, parties, and witnesses. The unavailability of a witness, however, is not grounds for delaying a trial, and Judge Waldman will expect the parties to proceed using the written transcript or videotape of the deposition of an unavailable witness.

### **4.     *Notetaking by Jurors***

To date, Judge Waldman has not allowed notetaking by jurors.

**5. Trial Briefs**

Judge Waldman typically requires the submission of trial briefs. *See* the attached sample form of Pretrial Order.

**6. Voir Dire**

Judge Waldman generally does not conduct *voir dire*. Rather, counsel for parties do so.

**7. Side Bars**

Judge Waldman has no specific policy regarding side-bar conferences, and he permits them as needed.

**8. In Limine Motions**

Counsel may submit motions *in limine* at any time, provided that the Court has an adequate factual basis in the record and is not asked to rule in a vacuum or render an advisory opinion.

**9. Examination of Witnesses Out of Sequence**

Judge Waldman permits counsel to call witnesses out of turn for the convenience of the witnesses.

**10. Opening Statements and Summations**

Judge Waldman generally does not impose a time limit on opening statements. With regard to summations, time limits generally are not imposed, but Judge Waldman discusses time limits for summations with counsel at the charging conference on jury instructions.

**11. Examination of Witnesses or Argument by More Than One Attorney**

Judge Waldman generally permits more than one attorney for a party to examine different witnesses or to argue different points before the Court. Judge Waldman does not permit more than one attorney for a party to examine the same witness or to argue on the same point.

**12. Examination of Witnesses Beyond Redirect and Recross**

Judge Waldman rarely permits further examination of witnesses after redirect and recross have been completed.

**13. Videotaped Testimony**

Judge Waldman has no special procedures with respect to the use of videotaped

testimony. However, all equipment must be set up in advance to avoid wasting time in the courtroom.

**14. *Reading of Material Into the Record***

Judge Waldman does not have any special practice or policy concerning the reading of stipulations, pleadings, or discovery materials into the record.

**15. *Preparation of Exhibits***

As set forth in the attached sample Pretrial Order, Judge Waldman typically requires that all documentary and photographic exhibits be pre-marked and that counsel exchange copies of all such exhibits and provide an opportunity for opposing counsel to view any models or videotapes. Counsel should provide one copy of all trial exhibits to Judge Waldman, along with a complete schedule that describes each exhibit.

**16. *Offering Exhibits Into Evidence***

Judge Waldman has no preference as to when counsel should offer exhibits into evidence.

**17. *Motions for Judgment as a Matter of Law and Motions for Judgment on Partial Findings***

Motions for judgment as a matter of law (or Rule 52(c) motions non-jury trials) should be made in writing. Judge Waldman rarely allows extensive oral argument on such motions.

**18. *Proposed Jury Instructions and Verdict Forms***

Judge Waldman generally requires counsel to submit proposed jury instructions (one instruction per page) seven days before the case is placed in the trial pool. Judge Waldman usually conducts a charging conference on proposed jury instructions.

**19. *Proposed Findings of Fact and Conclusions of Law***

Judge Waldman generally requires counsel to submit proposed findings of fact and conclusions of law. Counsel are also required to file a copy of opposing counsel's proposed findings of fact and conclusions of law, with the disputed or contested portions underlined, and with brackets surrounding all statements of allegedly inadmissible evidence. This copy of opposing counsel's proposed findings of fact and conclusions of law must be signed pursuant to Rule 11.

## **Jury Deliberations**

### **1. *Written Jury Instructions***

To date, Judge Waldman has never given jurors a copy of the instructions or any portion thereof.

### **2. *Exhibits in the Jury Room***

Judge Waldman's general rule is that if an exhibit is admitted into evidence, it goes to the jury room.

### **3. *Handling of Jury Requests to Read Back Testimony or Replay Tapes***

If the jury requests to have portions of testimony read back, the testimony is usually played back on the Court's electronic court reporting equipment. When audiotape or videotape recordings have been admitted into evidence, and the jury requests that they be replayed, Judge Waldman generally permits this, and it is done in the courtroom in the presence of the parties and their attorneys.

### **4. *Availability of Counsel During Jury Deliberations***

Judge Waldman typically permits counsel to return to their offices and be available on telephone notice during jury deliberations.

### **5. *Taking the Verdict and Special Interrogatories***

In most civil cases, Judge Waldman submits written interrogatories to the jury.

### **6. *Polling the Jury***

If there is a request to poll the jury, the jury is polled by the courtroom deputy or, in his absence, by Judge Waldman.

### **7. *Interviewing the Jury***

Judge Waldman does not permit counsel to interview jurors after the verdict has been recorded and the jury has been discharged unless, *prior to the jury's discharge*, counsel request and receive permission for such interviews. This permits Judge Waldman to advise the jurors that counsel will seek to interview them, what conduct is proper, and what their rights are. Counsel are directed not to be abusive in such interviews.



## **CRIMINAL CASES**

### **1.     *Approach to Oral Argument and Motions***

In criminal cases, Judge Waldman will hold oral argument on motions when he believes that such argument may be beneficial, regardless of whether it has been requested by counsel.

### **2.     *Pretrial Conferences***

Judge Waldman generally does not hold pretrial conferences in criminal cases unless the cases are complex or involve multiple defendants.

### **3.     *Voir Dire***

Judge Waldman generally conducts all *voir dire* in criminal cases. He requires submission by counsel of proposed *voir dire* questions (in duplicate) at least seven days before a case is placed in the trial pool.

### **4.     *Sentencing Memoranda***

Judge Waldman generally requires the submission of sentencing memoranda by both the Government and the defendant.

## **OTHER GENERAL MATTERS**

1.     Judge Waldman prefers to receive copies of the appellate briefs when a decision he renders is appealed.

2.     Judge Waldman presides over a courtroom equipped for the taking of video transcripts and depositions. Counsel are therefore required to stand near a microphone whenever they desire to speak.

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

v. ) CIVIL ACTION  
)  
)  
)  
) NO.

SCHEDULING ORDER

AND NOW, TO WIT, this \_\_\_\_\_ day of \_\_\_\_\_, 2000, following review of the status reports filed by the parties in the above case, IT IS HEREBY ORDERED that:

1. The case will be listed for trial/placed in the trial pool on \_\_\_\_\_.
2. All discovery shall proceed forthwith and continue in such manner as will assure that all requests for, and responses to, discovery will be served, noticed and completed by \_\_\_\_\_.
3. All trial exhibits shall be marked and exchanged by the time discovery is to be completed.
4. Plaintiffs shall identify and serve Curriculum Vitae for all medical and other expert witnesses at least 20 days before completion of discovery. Medical and other expert reports and/or responses to expert witness discovery shall be served by plaintiffs on or before the date for completion of discovery.
5. Defendants shall identify and serve Curriculum Vitae for all medical and other expert witnesses, together with medical and other expert reports and/or responses to expert witness discovery, within 30 days after the date for completion of discovery.
6. Any motion for summary judgment shall be filed and served promptly after the close of discovery.
7. All parties shall prepare and file with the Clerk of Court their Pretrial Memoranda, in accordance with this Order and Local Rule of Civil Procedure 16.1(c) as follows:
  - a. Plaintiff--33 days following date for completion of discovery;
  - b. Defendant--seven (7) days thereafter.
8. Any party having an objection to: (A) the admissibility of any exhibit based on authenticity; (B) the admissibility for any reason (except relevancy) of any evidence expected to be offered; or, (C) the adequacy of the qualifications of an expert witness expected to testify;

shall set forth separately each such objection in their *Pretrial Memorandum*. Such objection shall describe with particularity the ground and the authority for the objection.

9. If any party desires an “offer of proof” as to any witness or exhibit expected to be offered, that party shall inquire of counsel *prior to trial* for such information. If the inquiring party is dissatisfied with any offer provided, such party shall file a motion seeking relief from the Court prior to trial.

10. Because a witness may be unavailable at the time of trial as defined in Federal Rule of Civil Procedure 32(a)(3), the Court expects use of oral or videotape depositions at trial of *any witness* whose testimony a party believes essential to the presentation of that party’s case, whether that witness is a party, a non-party, or an expert. The unavailability of any such witness *will not be a ground to delay* the commencement or progress of an ongoing trial. In the event a deposition is to be offered, the offering party shall file with the Court, prior to the commencement of the trial, a copy of the deposition transcript, but only after all efforts have been made to resolve objections with other counsel. Unresolved objections shall be noted in the margin of the deposition page(s) where a Court ruling is necessary and a covering list of such objections supplied therewith.

11. At least five days before the case is listed for trial or placement in the trial pool, each party shall submit to the Court (Chambers, Room 9613) two (2) copies of a trial memorandum on the legal issues involved in the case, containing the principal constitutional, statutory, regulatory and decisional authority relied upon.

12. At least seven days before the case is listed for trial or placement in the trial pool, each party shall submit to the Court, and serve on each other, proposed findings of fact and conclusions of law. The statement will list each proposed finding and conclusion in a separate numbered paragraph. Counsel should be concise and propose only those findings and conclusions that are essential to the claim or defense at issue.

13. At least three days before the case is listed for trial or placement in the trial pool, counsel shall file with the Clerk and serve on other counsel a copy of the other’s Proposed Findings of Fact and Conclusions of Law marked as follows:

- a. Only those parts of the proposed findings the accuracy of which is genuinely in dispute and only those parts of the conclusions of law that are contested will be underlined.
- b. Portions of the proposed findings the admissibility of which is contested will be bracketed.
- c. On the margin of the first page will be typed or written the name of the party on whose behalf the Marked Response is filed, followed by the signature of counsel in accordance with Fed. R. Civ. P. 11.

14. All parts of the proposed findings neither underlined nor bracketed will be received in evidence at the beginning of trial as uncontested.

15. Before commencement of trial, counsel will pre-mark and exchange all exhibits. The Court should be supplied with one copy of each exhibit, and a schedule of exhibits which shall briefly describe each exhibit.

*COUNSEL PLEASE NOTE:* This Scheduling Order will be the *only* written notice counsel will receive of the date this case will appear on the Court's trial list. Counsel and all parties shall be prepared to commence trial on that date or as soon thereafter as counsel receive telephone notice that trial is to commence. Cases on the trial list are disposed of in a variety of unpredictable methods (trial, dismissal, settlement, stay, etc.). For this reason it is very likely that your case may be called for trial out of its sequence on the list.

Requests for extensions of deadlines, trial pool entry date or other changes in the foregoing schedule should *not be made by telephone or letter*. Any such requests should be made by motion for good cause shown and accompanied by an explanatory memorandum, and a stipulation where other counsel consent.

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JAY C. WALDMAN, J.